

AMENDED IN SENATE APRIL 23, 2008

SENATE BILL

No. 1750

Introduced by Senator Alquist

February 22, 2008

An act to amend Section ~~17039~~ 25136 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1750, as amended, Alquist. ~~Net tax: credits.~~ *Corporation tax law: apportionment: situs of sales of intangible property.*

The Corporation Tax Law imposes taxes measured by income and, in the case of business income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except as otherwise provided. The Corporation Tax Law defines the sales factor by reference to "total sales in this state" and "total sales everywhere," and provides that sales, other than sales of tangible personal property, are in this state if the income-producing activity is either performed in this state, or performed both inside and outside of this state and a greater proportion of that activity is performed in this state, as compared to any other state, as provided.

This bill would specify that, notwithstanding those provisions, receipts of unitary intercompany royalty payments for patents and other intellectual property, as described, are considered to be in this state if the receipts from the sale of tangible personal property or services giving rise to those royalty payments are in this state, and the sale was made outside of the unitary group. This bill would additionally create

a rebuttable presumption that a taxpayer is deemed to have properly reported those royalty payments in this state if the taxpayer computes the amount of royalty payment receipts by applying a specified percentage, as provided.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law allows for the computation of, and order of allowance of, various credits against the “net tax,” as defined.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 25136 of the Revenue and Taxation Code*
2 *is amended to read:*

3 25136. (a) Sales, other than sales of tangible personal property,
4 are in this state if *either of the following occurs:*

5 (a)

6 (1) The income-producing activity is performed in this state;
7 or

8 (b)

9 (2) The income-producing activity is performed both in and
10 outside this state and a greater proportion of the income-producing
11 activity is performed in this state than in any other state, based on
12 costs of performance.

13 (b) (1) *Notwithstanding subdivision (a), receipts of unitary*
14 *intercompany royalty or other payments for patents and other*
15 *technology, know-how, trade names, or trademarks, to the extent*
16 *not eliminated from the sales factor pursuant to Section 25106.5-1*
17 *of Title 18 of California Code of Regulations, are in this state if*
18 *receipts from the sale of tangible personal property or services*
19 *giving rise to those royalty or other payments are in this state and*
20 *the sale was made outside the unitary group.*

21 (2) *A taxpayer is presumed to have properly reported in this*
22 *state intercompany royalty or other receipts for patents and other*
23 *technology, know-how, trade names, or trademarks, if the taxpayer*
24 *computes the amount of royalty or such other receipts in this state*
25 *by using a percentage, the numerator of which is the entire unitary*
26 *group’s total product and service sales receipts in this state related*

1 *to total intercompany royalty or other such payments not*
2 *eliminated from the sales factor and the denominator of which is*
3 *the entire unitary group's total product sales and service sales*
4 *receipts related to total intercompany royalty or other such*
5 *payments not eliminated from the sales factor. This presumption*
6 *may be rebutted upon a showing that the use of this formula would*
7 *result in an amount of income apportioned to this state that is*
8 *incongruous with the intent of this paragraph.*

9 *SEC. 2. This act provides for a tax levy within the meaning of*
10 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in Senate,
February 22, 2008. (JR11)**